Supreme Court, U.S.
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No. _____

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

OWEN CHARLES,
Petitioner,

v.

MARILYN CHARLES,
Respondent.

Petition for a Writ of Certiorari to the Supreme Court of Connecticut

---

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether under section 6 of the Connecticut Indian Land Claims Settlement Act, 25 U.S.C. § 1755, Connecticut validly assumed civil jurisdiction over the Mashantucket Pequot Reservation even though the State took no formal action to manifest its intent to assume such jurisdiction (in contrast to what the State has done to assume jurisdiction over another reservation within the State), and the Tribe did not formally consent to the State's assumption of such jurisdiction.

2. Whether, in this divorce and custody case, the Connecticut courts erred in failing to abstain in favor of parallel proceedings before the Mashantucket Pequot Tribal Court where: (a) the Tribal Court has jurisdiction to decide the matter; (b) the defendant is an enrolled member of the Tribe who lives on the Tribal Reservation, the child is an enrolled member of the Tribe, the plaintiff is not a Connecticut resident; and (c) the terms of the Connecticut Indian Land Claims Settlement Act, even if construed to vest the State with concurrent jurisdiction, would still require the State to apply principles of Tribal law that do not conflict with State law.

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Owen Charles, respectfully petitions for a writ of certiorari to review the judgment of the Connecticut Supreme Court in this case.

OPINIONS BELOW

The opinion of the Connecticut Supreme Court (App. A, *infra*) is reported at 243 Conn. 255. The opinion of the Connecticut Superior Court, reversed by the Connecticut Supreme Court (App. B, *infra*), is unreported but available at 1997 Conn. Super. LEXIS 1259 (May 7, 1997).

JURISDICTION

The judgment of the Connecticut Supreme Court was entered on November 18, 1997. App. A at 1a. No petition for rehearing was filed. This Court's jurisdiction is invoked under 28 U.S.C. § 1257.

STATUTES INVOLVED

Section 6 of the Connecticut Indian Land Claims Settlement Act of October 18, 1983, Public Law 98-134, 97 Stat. 851, codified in 25 U.S.C. § 1755 provides:

> **1755. State jurisdiction over reservation**
>
> Notwithstanding the provisions relating to a special election in section 406 of the Act of April 11, 1968 (82 Stat. 80; 25 U.S.C. 1326), the reservation of the Tribe is declared to be Indian country subject to State jurisdiction to the maximum extent provided in title IV of such Act [25 U.S.C. §§ 1321-1326].

Section 402 of Title IV of the Act of April 11, 1968, the Indian Civil Rights Act codified in 25 U.S.C. § 1322 provides (emphasis added):

> **1322. Assumption by State of civil jurisdiction**
>
> **(a) Consent of the United States; force and effect of civil law**
>
> The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State *to assume, with the consent of the tribe* occupying the particular Indian country or part thereof which would be affected by such assumption [of state jurisdiction] such measure of jurisdiction over any or all such civil causes of action arising within such Indian country . . . to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country . . . as they have elsewhere within that State. . . .
>
> * * * *

(c) Force and effect of tribal ordinances or customs

> Any tribal ordinance or custom heretofore or hereinafter adopted by an Indian tribe, . . . in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

Section 406 of Title IV of the Act of April 11, 1968, the Indian Civil Rights Act codified in 25 U.S.C. § 1326 provides:

1326. Special election

> State jurisdiction acquired pursuant to this title [25 U.S.C. §§ 1321 *et seq.*] with respect to . . . civil causes of action, . . ., shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose.

STATEMENT OF THE CASE

The Mashantucket Pequot Tribe is a federally recognized Indian Tribe with a reservation in Ledyard, Connecticut. App. A at 2a; 25 U.S.C. § 1758(a). Petitioner, Owen Charles, is an enrolled member of the Tribe. App. A at 2a.

On October 23, 1995 the Mashantucket Pequot Tribe adopted a family law ordinance which vested the Tribe's courts with civil jurisdiction over proceedings for dissolution of a marriage. App. B at 15a n. 5. On November 1, 1995, Marilyn Charles, a non-Indian who was and remains a resident of Rhode Island, filed suit in the Connecticut Superior Court against Petitioner seeking dissolution of their marriage, as well as custody of their child, child support and alimony. App. B at 12a-13a. The Petitioner, both at the time of the filing of the Connecticut suit, and since then, has resided on the Mashantucket Pequot Reser-

vation. *Id.* The parties' child is an enrolled member of the Mashantucket Pequot Tribe.

In November 1996, Petitioner moved to dismiss the state court action for lack of personal jurisdiction. App. B at 14a. The motion was denied by the Connecticut Superior Court in March 1996. *Id.* Petitioner appealed that ruling, but the appeal was dismissed by the Appellate Division in September 1996 for lack of a final judgment. App. B at 15a n. 4.

In October 1996 Petitioner initiated a suit in the Mashantucket Pequot Tribal Court against Marilyn Charles seeking dissolution of their marriage, custody and child support. App. B at 15a. Marilyn Charles, through counsel, entered an appearance in the Tribal Court case, *id.* at n. 5, and filed an answer to the complaint admitting all allegations of the complaint. Marilyn Charles did not challenge the Tribal Court's jurisdiction, but filed a motion with the Tribal Court for a stay pending disposition of the proceedings in the Connecticut courts. *Id.* She has further moved in the Tribal Court for alimony pendente lite as well as custody and child support pendente lite.[1]

By motions filed with the Connecticut Superior Court in October 1996 and March 1997, Petitioner, represented by new counsel, sought to dismiss the state court action for lack of jurisdiction. App. B at 16a. By opinion and order entered on May 7, 1997, the Connecticut Superior Court granted the motion to dismiss, finding that it lacked jurisdiction over a suit for dissolution of a marriage brought by a nonresident of the State, against a tribal member living on the Reservation. App. B at 27a. The Court found that a trial member's domicile on the Reservation, alone, was not a sufficient contact with the State to give the State subject matter jurisdiction. *Id.* In dismissing the action, the Court further noted the potential availability

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[1] We are lodging a copy of the record of the proceedings in the Tribal Court with the Clerk of this Court.

of the Mashantucket Pequot Tribal Court as a forum for resolution of this matter. *Id.*

Marilyn Charles appealed the Superior Court's May 7 decision to the Connecticut Appellate Court, and the case was shortly thereafter transferred to the Supreme Court of Connecticut. App. A at 2a. The Supreme Court of Connecticut, by a decision issued on November 18, 1997, reversed the Superior Court's ruling. App. A at 2a-3a. The Court reasoned that "[t]he Superior Court has exclusive jurisdiction of all complaints seeking a dissolution of marriage," and that Connecticut statutes imposed a residency requirement "satisfaction of which is essential to confer on the court subject matter jurisdiction." App. A at 3a (footnote omitted). Because the plaintiff in the case was not a Connecticut resident, the Court held that state court jurisdiction could only be satisfied if the defendant—a tribal member living on the Reservation—were deemed a resident of the State. *Id.* The Court concluded that he was and that as a matter of state law the Superior Court had jurisdiction in the case. *Id.* at 11a.

The Connecticut Supreme Court further concluded that the federal statute governing Connecticut's jurisdiction over Indians on the Mashantucket Pequot Reservation—the Connecticut Indian Land Claims Settlement Act, 25 U.S.C. § 1755—vested the State with civil jurisdiction to adjudicate a divorce proceeding brought against an Indian residing on the Mashantucket Pequot Reservation. App. A at 3a-4a, 11a. Although the Settlement Act incorporates by reference the requirements of Public Law 280 as amended —under which the United States permits, but does not require, a State to assume jurisdiction over Indian country provided, however, that any such assumption of jurisdiction by the State be with the consent of the Tribe—the Connecticut Supreme Court concluded that under the Settlement Act, Tribal consent was not needed. App. A at 4a, 6a-11a. The Court did not address the need for any formal

act of the State of Connecticut assuming the jurisdiction offered by Congress.[2]

In holding that the State may exercise civil jurisdiction on the Reservation, the Connecticut Supreme Court reasoned that because the Settlement Act expressly excluded the requirement that a "special election" be used to manifest tribal consent to a state's assumption of jurisdiction, as set out in the 1968 amendments to Public Law 280, 25 U.S.C. § 1326, the Settlement Act eliminated *all* requirements for Tribal consent to state jurisdiction, including that which *separately* appears in another section of Public Law 280. That separate section, 25 U.S.C. § 1322(a), sets the procedures by which a state may agree to assume civil jurisdiction over Indian country and requires both "the consent of the tribe" and a state assumption of jurisdiction. *See* App. A at 7a-8a, 9a.

REASONS FOR GRANTING THE WRIT

I. THE CONNECTICUT SUPREME COURT RESOLVED INCORRECTLY AN IMPORTANT QUESTION OF THE STATE'S CIVIL JURISDICTION OVER INDIANS ON THEIR RESERVATION.

This case, like *Williams v. Lee*, 358 U.S. 217, 218 (1959), raises an "important question of state power over Indian affairs"—whether a state court may exercise jurisdiction over a civil suit brought by a non-Indian against an Indian living on the reservation. This turns on the interpretation of a federal statute, and the quintessential federal question of a state's authority to assert jurisdiction over Indians on a reservation. Because it has significant long-term effects on the relationship between the State of Con-

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[2] Our search of Connecticut law reveals no act by which the State formally undertook to assume jurisdiction over the Mashantucket Pequot Reservation, although, as discussed *infra*, the State *did* enact a statute to assume criminal jurisdiction over another Indian reservation—the Mohegan Reservation—in order to implement the jurisdictional provisions of a federal settlement act involving that tribe.

necticut and the Mashantucket Pequot Tribe, this case warrants Supreme Court review.

II. THE CONNECTICUT SUPREME COURT MISCONSTRUED THE CONNECTICUT INDIAN LAND CLAIMS SETTLEMENT ACT.

The Court's construction of the Connecticut Indian Land Claims Settlement Act to conclude that the State had civil jurisdiction over the Mashantucket Pequot Reservation, in the absence of any formal act by the State assuming such jurisdiction or consent by the Tribe, is in clear conflict with established precedent of this Court.

The jurisdictional provision of the Connecticut Indian Lands Claims Settlement Act, 25 U.S.C. § 1755, expressly incorporates by reference the requirements of Public Law 280 as amended in 1968. Public Law 280 effectively imposes three preconditions to a state's assumption of jurisdiction over Indian country. First, the United States must give its consent, and such consent is reflected in the terms of both the Settlement Act and Public Law 280 itself. *See* 25 U.S.C. §§ 1755, 1322(a). Second, the State must take some formal action[3] manifesting its intent to assume or assert jurisdiction over the Reservation—beyond simply the exercise of jurisdiction at the behest of a private party in a particular civil action. 25 U.S.C. §§ 1322(a), 1324. *See Williams v. Lee*, 358 U.S. 217, 222 (1959); *Kennerly v. District Court of Montana*, 400 U.S. 423, 427 (1971); *Washington v. Confederated Bands and Tribes of the Yakima Indian Nation*, 439 U.S. 463, 485-86 n.30 (1979). Third, because Congress understood that a state's assumption of jurisdiction could have

[3] While the form by which the State chooses to manifest its intent to assume jurisdiction over Indian country is not dictated by the federal statute, but a matter of state law, *see Washington v. Confederated Bands and Tribes of the Yakima Indian Nation*, 439 U.S. 463, 484-93 (1979), the significance that an assumption of jurisdiction has on the interests of both a state and a tribe require some formal act by the state. *See id.* at 486 n.30, 493.

serious implications for tribal sovereignty, Congress also required that a tribe consent to the state's assumption of jurisdiction before such jurisdiction is granted. 25 U.S.C. § 1322(a). Tribal consent is an integral part of this statutory scheme.[4] In addition, under Public Law 280, where all three preconditions are met, the State is still required to apply tribal law and custom, if not inconsistent with the civil law of the State, in determining civil causes of action pursuant to that section. *Id.* at § 1322(c).

Congress very deliberately chose to invoke the requirements of Public Law 280 as amended when Congress enacted the Connecticut Indian Land Claims Settlement Act in 1983. The only part of Public Law 280 that Congress directed not apply—as Congress expressly stated in section 1755—was the "special election" procedures the 1968 Amendments required be used to manifest tribal consent to a state's assumption of jurisdiction.[5] Thus, while § 1755 of the Settlement Act does not condition Connecticut's assumption of jurisdiction on a "special election" by tribal members as provided in 25 U.S.C. § 1326, Congress otherwise quite carefully chose *not* to

[4] "The impetus for the addition of a consent requirement in the 1968 amendments [to Public Law 280] was congressional dissatisfaction with the involuntary extension of state jurisdiction over Indians who did not feel they were ready to accept such jurisdiction, or who felt threatened by it." *Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering*, 476 U.S. 877, 892 (1986) (citing S. Rep. No. 721, 90th Cong., 1st Sess., 32 (1967)).

[5] Section 1326 specifies a procedure by which tribal consent would be manifested, requiring that "the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose." 25 U.S.C. § 1326. Presumably, however, in the era of Self-Determination, Congress found it unnecessary to dictate to the Mashantucket Pequot Tribe the manner by which it could manifest its consent to a state's assumption of jurisdiction, but instead left the Tribe, like the State, *see* Note 3, *supra*, free to determine for itself the appropriate method by which this might be done.

omit all other requirements of Public Law 280, specifically that (a) the State manifest its intent to assume jurisdiction over the Reservation by some formal action, 25 U.S.C. § 1322(a) and (b) that the Tribe consent to the State's assumption of jurisdiction as separately required by 25 U.S.C. § 1322(a). Indeed, given the constraints imposed by the Tenth Amendment of the United States Constitution on Congress' power to compel a state to assume a federal obligation, *see Printz v. United States*, 521 U.S. ——-, 138 L.Ed.2d 914 (1997), we question whether Congress could have constitutionally conferred such jurisdiction on a state without allowing the state, by some subsequent act, to choose whether it would agree to assume the responsibilities and burdens that—as this Court has found—accompany the assumption of such jurisdiction. *See Williams v. Lee*, 358 U.S. 217, 220 (1959); *Kennerly v. District Court of Montana*, 400 U.S. 423, 427 (1971).

Significantly, neither of the two requirements imposed by Public Law 280—a formal State act assuming jurisdiction, or consent by the Tribe—has been satisfied with regard to the Mashantucket Pequot Reservation. First, there is no evidence that Connecticut has manifested its intent to assume jurisdiction over Indians on the Mashantucket Pequot Reservation by any formal action. The State however, apparently recognizes that some such formal action is required to assume jurisdiction over Indian country, as the State—in the context of assuming jurisdiction over *another* reservation in the State (the Mohegan Reservation)—expressly enacted a statute formally assuming jurisdiction. *See* Connecticut Public Act 96-142 effective May 29, 1996, codified at § 47-65b of the General Statutes of Connecticut. That statute recites:

> The state of Connecticut assumes criminal jurisdiction and civil regulatory jurisdiction pursuant to the May 17, 1994 Agreement and the May 17, 1994, Gaming Compact between the state of Connecticut

> and the Mohegan Tribe of Indians of Connecticut and Public Law 103-377.[6]

In stark contrast to this act of the State Legislature, Connecticut has done nothing to formally manifest its intent to assume civil jurisdiction over the Mashantucket Pequot Reservation.

The lack of compliance by the State of Connecticut with the provisions of Public Law 280 for assuming civil jurisdiction over the Mashantucket Pequot Reservation was noted by the federal district court in *Mashantucket Pequot Tribe v. McGuigan*, 626 F. Supp. 245 (D. Conn. 1986). There, in the context of holding that state bingo laws did not apply to the Mashantucket Pequot Tribe's bingo operation, the federal district court noted that:

> There is no claim that Connecticut has formally acted to assume jurisdiction over the land which now constitutes plaintiff's Reservation . . . nor that the tribe has consented to such assumption. . . .

Id. at 247. The court further noted that the Settlement Act placed the Mashantucket Pequot Reservation "on the same footing as Indian land then controlled by . . . the successor to Public Law 83-280," *id.* at 248, but that by eliminating the special election requirement contained in section 1326, Congress "may have created an anomaly by the fact that it does not eliminate the consent requirement of 25 U.S.C. section 1321." *Id.* The court, however, found it unnecessary to resolve the question of tribal consent as it declined to find state jurisdiction to enforce its bingo laws on the Reservation on other grounds. *Id.*

Since Connecticut has never formally acted to assume jurisdiction over the Mashantucket Pequot Reservation,

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[6] Similarly, the Connecticut Supreme Court in *Schaghticoke Indians of Kent, Connecticut, Inc. v. Potter*, 217 Conn. 612, 587 A.2d 139 (1991) concluded that some formal manifestation of the State's intent to assume civil jurisdiction over Indians on a reservation is required by Public Law 280.

there likewise has been no need for the Tribe to formally indicate whether it would consent to the State's assumption of such jurisdiction—as is required by § 1322. And the absence of formal State action assuming jurisdiction over the Mashantucket Pequot Reservation, coupled with the complete lack of Tribal consent to the State's assertion of jurisdiction, bar the State from now claiming it has civil jurisdiction over matters involving Indians on the Reservation.

The Connecticut Supreme Court's decision thus conflicts with established and longstanding precedent of this Court which (1) hold that states lack jurisdiction over Indians on their reservations unless Congress, by a clear and plain statement has consented to such jurisdiction;[7] (2) require strict compliance with federal statutes authorizing a state to assume jurisdiction over Indian country; and (3) require any doubt to be resolved against a state's assumption of jurisdiction and in favor of preserving tribal sovereignty.[8]

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[7] As this Court has stated: "[t]he policy of leaving Indians free from state jurisdiction is deeply rooted in the Nation's history." *Rice v. Olson*, 324 U.S. 786, 789 (1945). "[F]rom the very first days of our Government, the Federal Government had been permitting the Indians largely to govern themselves, free from state interference, ..." *Warren Trading Post v. Arizona Tax Comm.*, 380 U.S. 685, 686-87 (1965). "Congress has also acted consistently upon the assumption that the states have no power to regulate the affairs of Indians on a reservation." *Williams v. Lee*, 358 U.S. 217, 220 (1959). *Accord McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 170-71 (1973); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832).

[8] *Williams v. Lee*, 358 U.S. 217, 218, 222 (1959); *Kennerly v. District Court of Montana*, 400 U.S. 423 (1971); *Washington v. Confederated Bands of Yakima Indian Nation*, 439 U.S. 463, 484 (1979) ("[A]mbiguities in legislation affecting retained tribal sovereignty are to be construed in favor of the Indians . . ."). *See also Bryan v. Itasca County*, 426 U.S. 373, 392 (1976) ("[I]n construing this 'admittedly ambiguous' statute, we must be guided by that 'eminently sound and vital canon' that 'statutes passed for the

III. THE DECISION OF THE CONNECTICUT SUPREME COURT CONFLICTS WITH THE WELL SETTLED RULE OF FEDERAL LAW THAT COURTS SHOULD ABSTAIN FROM EXERCISING JURISDICTION UNTIL A TRIBAL COURT HAS HAD AN OPPORTUNITY TO EXERCISE ITS JURISDICTION.

This Court's decisions in *Nat'l Farmers Union Ins. Co. v. Crow Tribe*, 471 U.S. 845 (1985) and *Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9 (1987) establish a policy of abstention in favor of tribal court jurisdiction in cases where jurisdiction lies in both federal court and tribal court. The teaching of these cases is simple. Where such concurrent jurisdiction is present, civil jurisdiction "presumptively lies in the tribal courts unless affirmatively limited by a specific treaty provision or federal statute." *LaPlante*, 480 U.S. at 18; *see also Nat'l Farmers Union*, 471 U.S. at 855-57. This should be particularly so where the matter at issue is the marital status of a tribal member residing on the Tribe's Reservation. Thus while not a matter of this Court's supervisory authority over the lower federal courts, the abstention doctrine reflects important federal interests in protecting tribal sovereignty and should have equal application here.

This abstention doctrine was born out of a concern that the federal government's longstanding policy of promoting tribal self-government through the development of tribal courts would be frustrated without a policy of deference to tribal courts when jurisdiction lies concurrently with a tribal court and a federal court. *Nat'l Farmers Union*, 471 U.S. at 856; *LaPlante*, 480 U.S. at 15-16. In both cases the Court found that although federal subject matter jurisdiction existed, the government's firmly established policy of promoting Indian self-governance and

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benefit of dependent Indian tribes . . . are to be liberally construed, doubtful expressions being resolved in favor of the Indians.' ") (citations omitted).

self-determination required exhaustion of tribal court remedies before any action on the same subject matter could be maintained in federal court. *Nat'l Farmers Union*, 471 U.S. at 856; *LaPlante*, 480 U.S. at 18. The Court recognized that few if any such cases (especially those involving non-Indians) would be heard by tribal courts without such deference, effectively undermining tribal law-making authority and tribal institutions. In addition to furthering tribal self-governance, the Court found that deferral to tribal courts in these instances would foster the "orderly administration of justice" by avoiding the " 'procedural nightmare' " often alleged when tribal courts share jurisdiction with another court. *Nat'l Farmers Union*, 471 U.S. at 856.

The same policy considerations that underlie the abstention rule in the context of concurrent federal jurisdiction apply with equal, if not greater, force where a state court seeks to assert jurisdiction over a matter within the jurisdiction of the tribal court. The abstention doctrine promotes tribal sovereignty because it protects the tribal courts from the harsh realities of concurrent jurisdiction —that tribal courts will hear relatively few cases within their jurisdiction. That same reality is just as prevalent when jurisdiction lies concurrently between a state court and tribal court. As this Court noted, "[i]f state-court jurisdiction over Indians or activities on Indian lands would interfere with tribal sovereignty and self-government, the state courts are generally divested of jurisdiction as a matter of federal law." *LaPlante*, 480 U.S. at 15. Thus even where states and tribes might share jurisdiction, the promotion of Indian self-government dictates that abstention in favor of tribal courts is required. "The federal policy favoring tribal self-government operates even in areas where state control has not been affirmatively preempted by federal statute." *Id.* at 14. And as this Court has found "[a]djudication of such matters by *any nontribal court* also infringes upon tribal law-making authority, be-

cause tribal courts are best qualified to interpret and apply tribal law." *Id.* at 16 (emphasis added).

Abstention is warranted in this case. There is no dispute that the Mashantucket Pequot Tribal Court has jurisdiction to hear and decide a dissolution of marriage proceeding involving a tribal member residing on the Reservation. App. B at 15a, n. 5. Although asked to dismiss this action to allow the matter to be heard in the Tribal Court, the Connecticut Supreme Court declined to address the exhaustion doctrine. Its failure to do so conflicts with another decision of the State court, in particular *Drumm v. Brown*, No. CV-96-079971, p. 4 (Judicial District of Middlesex at Middletown June 27, 1997) *appeal pending*, where the State court expressly concluded that under the dictates of this Court's decisions in *Nat'l Farmers Union* and *LaPlante*, the Mashantucket Pequot Tribal Court "should have the first opportunity to determine its jurisdiction," and dismissed the State court action.[9]

Moreover, application of the abstention doctrine is all the more compelling given the facts of this case. The only contact that the Connecticut courts claim to have with regard to the litigation is based on the Court's conclusion that a tribal member living on the Reservation is a resident of the State. The non-Indian plaintiff in the Connecticut suit is not a resident of the State of Connecticut—but resides in Rhode Island. Moreover, under Public Law 280, even if the State were found to have civil jurisdiction, the State may be called upon to apply principles of tribal law in resolving questions related to the dissolution of the marriage. *See* 25 U.S.C. § 1322(c). Given the availability of a Tribal forum to do this, no purpose is served by the State's assumption of jurisdiction in these circumstances.

Proper application of this Court's decisions in *Nat'l Farmers Union* and *LaPlante* by state courts is becoming

[9] We are lodging a copy of this opinion with the Clerk of this Court.

increasingly important as more tribal governments—like the Mashantucket Pequot—utilize the self-governance tools provided by Congress to develop tribal court systems.[10] But as the number of tribal courts increase, so do the instances of concurrent jurisdiction with various state courts, and the greater the threat to tribal sovereignty and self-determination posed by an absence of a ruling requiring deference to tribal court jurisdiction.[11] The circumstances of this case illustrate this point. The tribal government here recently established its tribal court system. Without an adequate opportunity to exercise its jurisdiction, its entire system is severely undermined. Federal policy favors the development of tribal courts and recognizes that this can only be achieved by allowing tribal courts the first opportunity to hear a case when jurisdiction is shared. As this Court stated: "[p]romotion of tribal self-government and self-determination require[s] that the Tribal Court have the first opportunity [to exer-

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[10] *See* Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450 *et seq.* (encouraging the development of tribal judicial systems through direct contracting with the federal government).

[11] Unfortunately, state courts have not uniformly applied the rule of abstention. *E.g., Gavle v. Little Six, Inc.*, 555 N.W.2d 284, 292 (Minn. 1996), *petition for cert. filed* (Jan. 29, 1997) (finding that *Nat'l Farmers Union* and *LaPlante* need not be followed by state courts unless an assumption of jurisdiction "infringes" upon tribal sovereignty); *Granite Valley Hotel Ltd Partnership v. Jackpot Junction Bingo & Casino*, 559 N.W.2d 135, 137 (Minn. Ct. App. 1997) (same); *Maxa v. Yakima Petroleum, Inc.*, 924 P.2d 372 (Wash. Ct. App. 1996), *review denied*, 1997 Wash. Lexis 218(1997). *But see Bowen v. Doyle*, 880 F. Supp. 99, 123-26 (W.D.N.Y. 1995) (applying the tribal court exhaustion doctrine to state courts); *Nenana Fuel Co., Inc. v. Native Village of Venetie*, 834 P.2d 1229, 1233-35 (Alaska 1992) (recognizing the applicability of the abstention doctrine to state courts when jurisdiction is shared with tribal courts); *Matsch v. Prairie Island Indian Community*, 567 N.W.2d 276 (Minn. Ct. App.), *review denied*, 1997 Minn. Lexis 717 (1997) (dismissing state court action in favor of a concurrent tribal court action under *Nat'l Farmers Union* and *LaPlante*); *Klammer v. Lower Sioux Convenience Store*, 535 N.W.2d 379 (Minn. Ct. App. 1995) (same).

cise jurisdiction]." *LaPlante*, 480 U.S. at 15-16 (internal quotation omitted).

CONCLUSION

For all of the foregoing reasons, Petitioner respectfully prays that this Court grant the petition and reverse the decision below.

Respectfully submitted,

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